IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6944 OF 2005

Jaspalsingh Diwansingh. ... Applicant.
Versus.
Devidas Ramdas Pawar & anr. ... Respondents.

Shri V.T.Sipahimalani for the Applicant.

Ms.M.H.Mhatre, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 24th October, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant. The challenge is to the order dated 2nd September 2005 passed by the learned Additional Sessions Judge. The Applicant is an accused in a private complaint filed under section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate convicted the Applicant for offence under section 138 of the said Act of 1881 and sentenced him to suffer simple imprisonment of three months and a fine of Rs.1,00,000/-.

2. In an appeal preferred by the Applicant, the learned Sessions Judge passed an interim order directing the Applicant to deposit Rs.50,000/- which is the half of the compensation amount within a period of two weeks. The Applicant moved an application for stay of the said order directing deposit of the amount and accordingly stay was granted by the same Court. Thereafter by the

impugned order, the application made by the Applicant for modification was rejected. The learned Judge while dismissing the application issued show-cause notice to the Applicant calling upon him to show-cause as to why action should not be initiated against the Applicant for non-appearance.

3. By order dated 18th October 2005, this Court stayed the bailable warrant issued against Applicant on the assurance of the Applicant to deposit Rs.50,000/- in the Sessions Court. Accordingly on 21st October 2005 the Applicant has deposited Rs.50,000/- in the Sessions Court.

4. The learned Counsel for the Applicant submitted that the learned Magistrate could not have directed the Applicant to pay a fine of amount more than Rs.5000/-. He, therefore, submitted that the direction given to deposit Rs.50,000/- by the Sessions Court was patently illegal.

5. Now the Applicant has complied with the order passed by the learned Sessions Court by depositing a sum of Rs.50,000/-. Whether the order passed by the learned Magistrate is illegal or not will be decided at the time of final hearing of the appeal preferred by the Applicant. At this stage no interference is called for with the impugned order. However, direction given by

the learned Additional Sessions Judge to issue show-cause notice will not survive in view of the subsequent deposit of Rs.50,000/- and consequently the warrant ordered to be issued against the Applicant on account of non-payment of Rs.50,000/- cannot be executed.

6. Hence the following order is passed:

i) The Application is rejected.

ii) Deposit of Rs.50,000/- by the Applicant in the Sessions Court on 21st October 2005 shall be treated as sufficient compliance of the order dated 16th August 2004 passed by the Sessions Court in Criminal Appeal No.271 of 2004. Consequently the direction to issue show-cause notice and non-bailable warrant against the Applicant on the basis of non-deposit of Rs.50,000/- by the Applicant shall not be implemented.

iii) All questions on merits of the pending Appeal are kept open.

iv) The parties to act on an authenticated copy of this order.

Judge.